

REMARKS

In the present Office Action, claims 23-32 have been considered. Original claims 1-22 have been deleted, and claims 29-32 were added by preliminary amendment. In the present amendment, each of claims 23-32 has been amended and new claims 33-37 have been added. After entry of the amendment, claims 23-37 remain for consideration.

Claims 23-32 stand rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-22 of US. Patent No. 6,622,047. Applicants acknowledge the provisional rejection. However, because no claim has been indicated as allowable, a terminal disclaimer is premature at present. Applicants will timely file a terminal disclaimer upon indication of allowable claims properly rejected on this basis.

Claims 23-32 further stand rejected as anticipated under 35 U.S.C. §102(b) by US 5,299,569 to Wernicke et al. According to the Examiner:

The '569 patent teaches all of the structure of the above claims. The placement of the electrodes, as set forth in applicant's claims, is considered to be intended use not a structural limitation.

Office Action of 11/25/05, at 3 lines 6-8.

Applicants have amended independent claims 23 and 30 to recite a system comprising an implanted electrode that is coupled to the vagus nerve at a particular location, i.e., "at a location in a range from about two to about three inches above or below the patient's diaphragm." The claims as amended recite a structural element that is neither disclosed nor suggested by the cited reference. Newly added independent claim 34 recites an electrode that is "attached to said vagus nerve at a location below the patient's diaphragm." This structural element is likewise not disclosed or suggested by the cited reference.

Applicants submit that the claims as presently presented are allowable over the cited reference. Accordingly, it is respectfully requested that the proposed Amendment be entered, the claims reconsidered, and that early notice of allowability be provided.



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Date

Respectfully submitted,

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